

109TH CONGRESS  
2D SESSION

# H. R. 4772

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2006

Mr. CHABOT (for himself, Mr. GORDON, Mr. GALLEGLY, Mr. FLAKE, Mr. SENSENBRENNER, Mr. BOYD, Mr. FEENEY, and Mr. POMBO) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property  
5 Rights Implementation Act of 2005”.

1 **SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CON-**  
2 **CERNING REAL PROPERTY.**

3 Section 1343 of title 28, United States Code, is  
4 amended by adding at the end the following:

5 “(c) Whenever a district court exercises jurisdiction  
6 under subsection (a) in an action in which the operative  
7 facts concern the uses of real property, it shall not abstain  
8 from exercising or relinquish its jurisdiction to a State  
9 court if the party seeking redress does not allege a viola-  
10 tion of a State law, right, or privilege, and no parallel pro-  
11 ceeding is pending in State court that arises out of the  
12 same operative facts as the district court proceeding.

13 “(d) In an action in which the operative facts concern  
14 the uses of real property, the district court shall exercise  
15 jurisdiction under subsection (a) even if the party seeking  
16 redress does not pursue judicial remedies provided by a  
17 State or territory of the United States.

18 “(e) If the district court has jurisdiction over an ac-  
19 tion under subsection (a) in which the operative facts con-  
20 cern the uses of real property and which cannot be decided  
21 without resolution of an unsettled question of State law,  
22 the district court may certify the question of State law  
23 to the highest appellate court of that State. After the  
24 State appellate court resolves the question so certified, the  
25 district court shall proceed with resolving the merits. The

1 district court shall not certify a question of State law  
2 under this subsection unless the question of State law—

3 “(1) is necessary to resolve the merits of the  
4 Federal claim of the injured party; and

5 “(2) is patently unclear.

6 “(f)(1) Any claim or action brought under section  
7 1979 of the Revised Statutes of the United States (42  
8 U.S.C. 1983) to redress the deprivation of a property right  
9 or privilege secured by the Constitution shall be ripe for  
10 adjudication by the district courts upon a final decision  
11 rendered by any person acting under color of any statute,  
12 ordinance, regulation, custom, or usage, of any State or  
13 territory of the United States, which causes actual and  
14 concrete injury to the party seeking redress.

15 “(2) For purposes of this subsection, a final decision  
16 exists if—

17 “(A) any person acting under color of any stat-  
18 ute, ordinance, regulation, custom, or usage, of any  
19 State or territory of the United States, makes a de-  
20 finitive decision regarding the extent of permissible  
21 uses on the property that has been allegedly in-  
22 fringed or taken, without regard to any uses that  
23 may be permitted elsewhere; and

24 “(B) one meaningful application to use the  
25 property has been submitted but denied, and the

1 party seeking redress has applied for but is denied  
2 one waiver and one appeal, if the applicable statute,  
3 ordinance, regulation, custom, or usage provides a  
4 mechanism for waiver by or appeal to an administra-  
5 tive agency.

6 The party seeking redress shall not be required to apply  
7 for a waiver or appeal described in subparagraph (B) if  
8 such waiver or appeal is unavailable or can not provide  
9 the relief requested, or if pursuit of such a mechanism  
10 would otherwise be futile.”.

11 **SEC. 3. UNITED STATES AS DEFENDANT.**

12 Section 1346 of title 28, United States Code, is  
13 amended by adding at the end the following:

14 “(h)(1) Any claim brought under subsection (a) that  
15 is founded upon a property right or privilege secured by  
16 the Constitution, but was allegedly infringed or taken by  
17 the United States, shall be ripe for adjudication upon a  
18 final decision rendered by the United States, which causes  
19 actual and concrete injury to the party seeking redress.

20 “(2) For purposes of this subsection, a final decision  
21 exists if—

22 “(A) the United States makes a definitive deci-  
23 sion regarding the extent of permissible uses on the  
24 property that has been allegedly infringed or taken,

1 without regard to any uses that may be permitted  
2 elsewhere; and

3 “(B) one meaningful application to use the  
4 property has been submitted but denied, and the  
5 party seeking redress has applied for but is denied  
6 one waiver and one appeal, if the applicable law of  
7 the United States provides a mechanism for waiver  
8 by or appeal to an administrative agency.

9 The party seeking redress shall not be required to apply  
10 for a waiver or appeal described in subparagraph (B) if  
11 such waiver or appeal is unavailable or can not provide  
12 the relief requested, or if pursuit of such a mechanism  
13 would otherwise be futile.”.

14 **SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.**

15 Section 1491(a) of title 28, United States Code, is  
16 amended by adding at the end the following:

17 “(3) Any claim brought under this subsection  
18 founded upon a property right or privilege secured  
19 by the Constitution, but allegedly infringed or taken  
20 by the United States, shall be ripe for adjudication  
21 upon a final decision rendered by the United States,  
22 that causes actual and concrete injury to the party  
23 seeking redress. For purposes of this paragraph, a  
24 final decision exists if—

1           “(A) the United States makes a definitive  
2           decision regarding the extent of permissible  
3           uses on the property that has been allegedly in-  
4           fringed or taken, without regard to any uses  
5           that may be permitted elsewhere; and

6           “(B) one meaningful application to use the  
7           property has been submitted but denied, and  
8           the party seeking redress has applied for but is  
9           denied one waiver and one appeal, if the appli-  
10          cable statute, ordinance, regulation, custom, or  
11          usage provides a mechanism for waiver by or  
12          appeal to an administrative agency.

13          The party seeking redress shall not be required to  
14          apply for a waiver or appeal described in subpara-  
15          graph (B) if such waiver or appeal is unavailable or  
16          can not provide the relief requested, or if pursuit of  
17          such a mechanism would otherwise be futile.”.

18   **SEC. 5. CLARIFICATION FOR CERTAIN CONSTITUTIONAL**  
19                   **PROPERTY RIGHTS CLAIMS.**

20          Section 1979 of the Revised Statutes of the United  
21          States (42 U.S.C. 1983) is amended by adding at the end  
22          the following: “If the party injured seeks to redress the  
23          deprivation of a property right or privilege under this sec-  
24          tion that is secured by the Constitution by asserting a  
25          claim that concerns—

1           “(1) an approval to develop real property that  
2           is subject to conditions or exactions, then the person  
3           acting under color of State law is liable if any such  
4           condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the  
5           payment of a monetary fee or a dedication of real  
6           property from the injured party, is unconstitutional;

8           “(2) a subdivision of real property pursuant to  
9           any statute, ordinance, regulation, custom, or usage  
10          of any State or territory, or the District of Columbia, then such a claim shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated  
11          and recognized, as an individual property unit by the  
12          State, territory, or the District of Columbia; or

13          “(3) alleged deprivation of substantive due  
14          process, then the action of the person acting under  
15          color of State law shall be judged as to whether it  
16          is arbitrary, capricious, an abuse of discretion, or  
17          otherwise not in accordance with law.

18          For purposes of the preceding sentence, ‘State law’ includes any law of the District of Columbia or of any territory of the United States.”.

1   **SEC. 6. DUTY OF NOTICE TO OWNERS.**

2           (a) IN GENERAL.—Whenever a Federal agency takes  
3   an agency action limiting the use of private property that  
4   may be affected by the amendments by this Act, the agen-  
5   cy shall, not later than 30 days after the agency takes  
6   that action, give notice to the owners of that property ex-  
7   plaining their rights under such amendments and the pro-  
8   cedures for obtaining any compensation that may be due  
9   them under such amendments.

10          (b) DEFINITIONS.—For purposes of subsection (a)—

11               (1) the term “Federal agency” means “agen-  
12       cy”, as that term is defined in section 552(f) of title  
13       5, United States Code; and

14               (2) the term “agency action” has the meaning  
15       given that term in section 551 of title 5, United  
16       States Code.

17   **SEC. 7. SEVERABILITY AND EFFECTIVE DATE.**

18          (a) SEVERABILITY.—If any provision of this Act or  
19   the amendments made by this Act or the application there-  
20   of to any person or circumstance is held invalid, the re-  
21   mainder of this Act, the amendments made by this Act,  
22   or the application thereof to other persons not similarly  
23   situated or to other circumstances shall not be affected  
24   by such invalidation.



1       (b) EFFECTIVE DATE.—The amendments made by  
2 this Act shall apply to actions commenced on or after the  
3 date of the enactment of this Act.

